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CRIME PREVENTION AND CRIMINAL JUSTICE

Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty

Report of the Secretary-General

Addendum

1. Additional replies to the fifth quinquennial survey on capital punishment (E/1995/78), carried out in pursuance of Economic and Social Council resolution 1745 (LIV), have been received from Armenia, Canada, New Zealand, Japan, the Russian Federation and Slovakia. This brings the total number of responding countries to 63. The regional breakdown of all the responses received is as follows: 5 from North Africa and the Middle East, 5 from Africa south of the Sahara, 6 from Asia and the Pacific, 12 from Latin America and the Caribbean, 13 from Eastern Europe and 22 from Western European and other States.

2. Of the six responding countries, three retained capital punishment (Armenia, Japan and the Russian Federation), while one was abolitionist for ordinary crimes (Canada) and two were abolitionist for all crimes (New Zealand and Slovakia).

3. Armenia reported that the last death sentence had been pronounced on 3 February 1995 and that the last execution had taken place on 30 August 1991. It also reported that it had reduced the frequency of executions and that it had abolished the death penalty for theft, particularly of large amounts, of State or public property, in 1992. In Armenia, it was proposed to hold a referendum on the abolition of the death penalty. Most probably, both the new Constitution and the question of the death penalty would be voted on through the referendum. Recently, a new draft criminal code

had been proposed to Parliament according to which the death penalty should in no case apply to women. Armenia also reported that no research on the death penalty had been conducted recently.

4. Canada reported that the last execution for ordinary crimes had taken place in 1962, that it was abolitionist de facto for military crimes (the last execution for such a crime took place in 1944) and that the death penalty provisions of the National Defence Act (sentence of death possible for very serious offences) were under review.

5. New Zealand reported that it had abolished the death penalty for all crimes on 28 December 1989 and that the last execution had taken place in 1957. Factors which had contributed to the abolition of the death penalty were the obligations under the Second Optional Protocol to the International Covenant on Civil and Political Rights, which New Zealand had ratified in 1989; the fear that juries tended to convict for a lesser offence when a death penalty was attached to an offence, leading to shorter terms of imprisonment being served than justified by the offence; and the fact that public opinion did not believe in the deterrent effect of the death penalty. A mandatory penalty of life imprisonment had been substituted for the death penalty.

6. Japan reported that 28 persons had been sentenced to death (2 of them female), and that 8 executions had taken place during the reporting period, all for crimes against the person. At the end of the reporting period, 56 persons remained on death row. A public opinion poll concerning crime and punishment including a poll concerning the death penalty, had been conducted and the results published. Japan also noted that it was always trying to collect and analyse the necessary information, by paying attention to the trends in various countries as to whether they wanted to retain or abolish the death penalty, arguments for or against it inside and outside Japan, and trends in public opinion. In addition, Japan commented on the questionnaire itself, pointing out that differences in legal systems among States had not been adequately taken into account and that some questions seemed inappropriate because of inconsistencies with respect to the safeguards guaranteeing protection of the rights of those facing the death penalty.

7. The Russian Federation reported that 21 executions had taken place between 1991 and 1993. While no specific information was provided on the number of persons sentenced to death, it was reported that 298 sentences had been reviewed and that 241 persons had been pardoned during that period. As at 20 September 1994, 265 appeals had not yet been reviewed. The Commission on Pardons, which had been in operation since 1992 under the President of the Russian Federation, had submitted appropriate proposals for pardon of death sentences to the President.

8. Slovakia reported that it had abolished the death penalty for all crimes on 2 May 1990. Factors which had contributed to the abolition of the death penalty were: incompatibility with the fundamental human right to life; the principle of humanization of criminal justice; the principle that the penalty should serve to re-educate the offenders; and concern over wrongful convictions. The substitute penalties were either 15-25 years of imprisonment or life imprisonment.

9. All three retentionist countries applied the safeguards guaranteeing protection of the rights of those facing the death penalty, with few exceptions. The Russian Federation highlighted the new pardon system. None of those countries reported having a maximum age beyond which a person might not be sentenced to death or be executed. In addition, no specific law or regulation on the requirements of evidence applicable to the death penalty were reported, besides the general provisions requiring the firm conviction of guilt beyond any reasonable doubt and a strict and careful fact-finding process. The time allowed to make an appeal was 7 days in Armenia and 14 days in Japan. Death sentences were not automatically reviewed in those countries, nor were there initiatives or plans to introduce such a procedure. In Armenia, however, in "practice, death sentences were automatically reviewed to determine whether pardon may be granted or not". There was no limitation of time for preparing a petition for pardon or clemency in those countries. The methods of execution reported were shooting (Armenia) and hanging (Japan). The condemned person had no choice of the method of execution in either country.

10. None of the three retentionist countries had specific provisions for disseminating the safeguards guaranteeing protection of the rights of those facing the death penalty. However, Armenia and Japan reported that all officials concerned were substantially informed of the content of the safeguards during their training.

11. The types of offences for which capital punishment is imposed in retentionist countries are set out in the annex below.

Annex

TYPES OF CAPITAL OFFENCES IN RETENTIONIST COUNTRIES

Armenia

The death penalty is discretionally provided for the following offences:

(a) Ordinary crimes. Premeditated murder under aggravating circumstances; rape of a minor; rape resulting in especially serious consequences or committed by an especially dangerous recidivist; treason; espionage; acts of terrorism; acts of terrorism against the representatives of a foreign country; sabotage; particularly dangerous State crimes against another State; organization of participation in dangerous State crimes; banditry; actions destructive to the work of correctional institutions; disregard of the mobilization call in time of war; dealing in counterfeit money or securities; hijacking of an aircraft resulting in death or serious injuries;

(b) Military crimes. Insubordination; resisting an officer; exercise of force against a supervisor; desertion; unauthorized quitting of unit in a combat situation; evading military service through self-injury; intentional destruction of military property; violation of guarding rules; abuse of power; transfer of military articles to the enemy; quitting a military ship; and several other offences against military duties.

The death penalty is mandatory for the following ordinary crimes: taking a bribe under particularly aggravating circumstances; attempt on the life of a policeman under aggravating circumstances.

Canada

The death penalty is discretionally provided for the following military crimes: spying and mutiny with violence.

The death penalty is mandatory for the following military crimes only if they involve treason: security (miscellaneous offences); misconduct of commanders in the presence of the enemy; misconduct of any person in the presence of the enemy; becoming/remaining a prisoner of war.

Japan

The death penalty is discretionally provided for the following ordinary crimes: the overturning of a vessel or a railroad train, resulting in death; the overturning of a vessel thereby endangering traffic and resulting in death; the addition of poisonous material to a water main, resulting in death; murder; robbery resulting in death (including murder during a robbery); rape resulting in death during a robbery; seizure of an aircraft, resulting in death; crashing or destruction of an aircraft, resulting in death; murder of hostages; homicide during a duel; being ringleader of an insurrection; inducement of foreign aggression; assisting an enemy; arson of an inhabited structure; destruction by explosives; damage to an inhabited structure by means of flooding and use of explosives.

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